

Off. of Refugee Resettlement, ACF, HHS

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part, and for the third and fourth quarters in accordance with paragraph (a) of this section.

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PARTS 403–409 [RESERVED]

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Subpart A—Care and Placement of Unaccompanied Alien Children

§ 410.100 Scope of this part.

This part governs those aspects of the care, custody, and placement of unaccompanied alien children (UACs) agreed to in the settlement agreement reached in *Jenny Lisette Flores v. Janet Reno, Attorney General of the United States*, Case No. CV 85-4544-RJK (C.D. Cal. 1996). ORR operates the UAC program as authorized by section 462 of the Homeland Security Act of 2002, Public Law 107-296, 6 U.S.C. 279, and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, 8 U.S.C. 1232. This part

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does not govern or describe the entire program.

§ 410.101 Definitions.

DHS means the Department of Homeland Security.

Director means the Director of the Office of Refugee Resettlement (ORR), Administration for Children and Families, Department of Health and Human Services.

Emergency means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of UACs, or impacts other conditions provided by this part.

Escape risk means there is a serious risk that an unaccompanied alien child (UAC) will attempt to escape from custody.

Influx means a situation in which there are, at any given time, more than 130 minors or UACs eligible for placement in a licensed facility under this part or corresponding provisions of DHS regulations, including those who have been so placed or are awaiting such placement.

Licensed program means any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs UAC. A licensed program must meet the standards set forth in § 410.402. All homes and facilities operated by a licensed program, including facilities for special needs minors, are non-secure as required under State law. However, a facility for special needs minors may maintain that level of security permitted under State law which is necessary for the protection of a UAC or others in appropriate circumstances, *e.g.*, cases in which a UAC has drug or alcohol problems or is mentally ill.

ORR means the Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

Secure facility means a State or county juvenile detention facility or a secure ORR detention facility, or a facil-

ity with an ORR contract or cooperative agreement having separate accommodations for minors. A secure facility does not need to meet the requirements of § 410.402, and is not defined as a “licensed program” or “shelter” under this part.

Shelter means a licensed program that meets the standards set forth in § 410.402.

Special needs minor means a UAC whose mental and/or physical condition requires special services and treatment by staff. A UAC may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness, intellectual disability, or a physical condition or chronic illness that requires special services or treatment. A UAC who has suffered serious neglect or abuse may be considered a special needs minor if the UAC requires special services or treatment as a result of neglect or abuse.

Sponsor, also referred to as custodian, means an individual (or entity) to whom ORR releases a UAC out of ORR custody.

Staff secure facility means a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets the standards for licensed programs set forth in § 410.402. A staff secure facility is designed for a UAC who requires close supervision but does not need placement in a secure facility. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a shelter in order to control problem behavior and to prevent escape. A staff secure facility may have a secure perimeter but is not equipped internally with major restraining construction or procedures typically associated with correctional facilities.

Unaccompanied alien child (UAC) means:

(1) An individual who: Has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom:

(i) There is no parent or legal guardian in the United States; or

(ii) No parent or legal guardian in the United States is available to provide care and physical custody.

(2) When an alien previously determined to have been a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such an alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC. An alien who is no longer a UAC is not eligible to receive legal protections limited to UACs.

§410.102 ORR care and placement of unaccompanied alien children.

(a) ORR coordinates and implements the care and placement of UAC who are in ORR custody by reason of their immigration status.

(b) For all UACs in ORR custody, DHS and DOJ (Department of Justice) handle other matters, including immigration benefits and enforcement matters, as set forth in their respective statutes, regulations and other authorities.

(c) ORR shall hold UACs in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of minors.

(d) Within all placements, UACs shall be treated with dignity, respect, and special concern for their particular vulnerability.

Subpart B—Determining the Placement of an Unaccompanied Alien Child

§410.200 Purpose of this subpart.

This subpart sets forth what ORR considers when placing a UAC in a particular ORR facility, in accordance with the Flores settlement agreement.

§410.201 Considerations generally applicable to the placement of an unaccompanied alien child.

(a) ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the UAC's age and special needs, provided that such setting is consistent with its interests to ensure the UAC's timely appearance before DHS and the immigration courts and to protect the UAC's well-being and that of others.

(b) ORR separates UACs from delinquent offenders.

(c) ORR makes reasonable efforts to provide placements in those geographical areas where DHS apprehends the majority of UAC.

(d) Facilities where ORR places UACs will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if a UAC is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect UAC from others, and contact with family members who were arrested with the minor.

(e) If there is no appropriate licensed program immediately available for placement of a UAC pursuant to this subpart, and no one to whom ORR may release the UAC pursuant to subpart C of this part, the UAC may be placed in an ORR-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. In addition to the requirement that UACs shall be separated from delinquent offenders, every effort must be taken to ensure that the safety and well-being of the UAC detained in these facilities are satisfactorily provided for by the staff. ORR makes all reasonable efforts to place each UAC in a licensed program as expeditiously as possible.

(f) ORR makes and records the prompt and continuous efforts on its part toward family reunification. ORR continues such efforts at family reunification for as long as the minor is in ORR custody.

§410.202 Placement of an unaccompanied alien child in a licensed program.

ORR places UACs into a licensed program promptly after a UAC is transferred to ORR legal custody, except in the following circumstances:

(a) A UAC meeting the criteria for placement in a secure facility set forth in §410.203;

(b) As otherwise required by any court decree or court-approved settlement; or,

(c) In the event of an emergency or influx of UACs into the United States, in which case ORR places the UAC as expeditiously as possible in accordance with §410.209; or

(d) If a reasonable person would conclude that the UAC is an adult despite his or her claims to be a minor.

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§ 410.203 Criteria for placing an unaccompanied alien child in a secure facility.

(a) Notwithstanding § 410.202, ORR may place a UAC in a secure facility if the UAC:

(1) Has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, and where ORR deems those circumstances demonstrate that the UAC poses a danger to self or others. “Chargeable” means that ORR has probable cause to believe that the UAC has committed a specified offense. The provision in this paragraph (a)(1) does not apply to a UAC whose offense is:

(i) An isolated offense that was not within a pattern or practice of criminal activity and did not involve violence against a person or the use or carrying of a weapon; or

(ii) A petty offense, which is not considered grounds for stricter means of detention in any case;

(2) While in DHS or ORR’s custody or while in the presence of an immigration officer, has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself/herself or others);

(3) Has engaged, while in a licensed program or staff secure facility, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program or staff secure facility in which he or she has been placed and removal is necessary to ensure the welfare of the UAC or others, as determined by the staff of the licensed program or staff secure facility (e.g., drug or alcohol abuse, stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the UAC poses a danger to self or others based on such conduct;

(4) For purposes of placement in a secure residential treatment centers (RTC), if a licensed psychologist or psychiatrist determines that the UAC poses a risk of harm to self or others; or

(5) Is otherwise a danger to self or others.

(b) ORR Federal Field Specialists review and approve all placements of

UAC in secure facilities consistent with legal requirements.

(c) ORR reviews, at least monthly, the placement of a UAC into a secure, staff secure, or RTC facility to determine whether a new level of care is more appropriate.

(d) Notwithstanding ORR’s ability under the rules in this subpart to place UACs who are “otherwise a danger to self or others” in secure placements, the provision in this section does not abrogate any requirements to place UACs in the least restrictive setting appropriate to their age and special needs.

§ 410.204 Considerations when determining whether an unaccompanied alien child is an escape risk.

When determining whether a UAC is an escape risk, ORR considers, among other factors, whether:

(a) The UAC is currently under a final order of removal;

(b) The UAC’s immigration history includes:

(1) A prior breach of a bond;

(2) A failure to appear before DHS or the immigration court;

(3) Evidence that the UAC is indebted to organized smugglers for his or her transport; or

(4) A voluntary departure or a previous removal from the United States pursuant to a final order of removal; and

(c) The UAC has previously absconded or attempted to abscond from state or Federal custody.

§ 410.205 Applicability of § 410.203 for placement in a secure facility.

ORR does not place a UAC in a secure facility pursuant to § 410.203 if less restrictive alternatives are available and appropriate under the circumstances. ORR may place a UAC in a staff secure facility or another licensed program as an alternative to a secure facility.

§ 410.206 Information for unaccompanied alien children concerning the reasons for his or her placement in a secure or staff secure facility.

Within a reasonable period of time, ORR provides each UAC placed or transferred to a secure or staff secure facility with a notice of the reasons for

the placement in a language the UAC understands.

§410.207 Custody of an unaccompanied alien child placed pursuant to this subpart.

A UAC who is placed in a licensed program pursuant to this subpart remains in the custody of ORR, and may only be transferred or released under its authority. However, in the event of an emergency, a licensed program may transfer temporarily the physical placement of a UAC prior to securing permission from ORR, but must notify ORR of the transfer as soon as possible, but in all cases within eight hours of the transfer. Upon release to an approved sponsor, a UAC is no longer in the custody of ORR.

§410.208 Special needs minors.

ORR assesses each UAC to determine if he or she has special needs, and if so, places the UAC, whenever possible, in a licensed program in which ORR places unaccompanied alien children without special needs, but which provides services and treatment for such special needs.

§410.209 Procedures during an emergency or influx.

In the event of an emergency or influx that prevents the prompt placement of UAC in licensed programs, ORR makes all reasonable efforts to place each UAC in a licensed program as expeditiously as possible using the following procedures:

(a) ORR maintains an emergency placement list of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements.

(b) ORR implements its contingency plan on emergencies and influxes.

(c) Within one business day of the emergency or influx, ORR, if necessary, contacts the programs on the emergency placement list to determine available placements. To the extent practicable, ORR will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

(d) In the event that the number of UAC needing placement exceeds the

available appropriate placements on the emergency placement list, ORR works with governmental and non-governmental organizations to locate additional placements through licensed programs, county social services departments, and foster family agencies.

(e) ORR maintains a list of UACs affected by the emergency or influx including each UAC's:

- (1) Name;
- (2) Date and country of birth;
- (3) Date of placement in ORR's custody; and
- (4) Place and date of current placement.

(f) Each year ORR reevaluates the number of regular placements needed for UAC to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of UAC eligible for placement in licensed programs.

Subpart C—Releasing an Unaccompanied Alien Child From ORR Custody

§410.300 Purpose of this subpart.

This subpart covers the policies and procedures used to release, without unnecessary delay, a UAC from ORR custody to an approved sponsor.

§410.301 Sponsors to whom ORR releases an unaccompanied alien child.

(a) ORR releases a UAC to an approved sponsor without unnecessary delay, but may continue to retain custody of a UAC if ORR determines that continued custody is necessary to ensure the UAC's safety or the safety of others, or that continued custody is required to secure the UAC's timely appearance before DHS or the immigration courts.

(b) When ORR releases a UAC without unnecessary delay to an approved sponsor, it releases in the following order of preference:

- (1) A parent;
- (2) A legal guardian;
- (3) An adult relative (brother, sister, aunt, uncle, or grandparent);
- (4) An adult individual or entity designated by the parent or legal guardian

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as capable and willing to care for the UAC's well-being in:

(i) A declaration signed under penalty of perjury before an immigration or consular officer; or

(ii) Such other document that establishes to the satisfaction of ORR, in its discretion, the affiant's parental relationship or guardianship;

(5) A licensed program willing to accept legal custody; or

(6) An adult individual or entity seeking custody, in the discretion of ORR, when it appears that there is no other likely alternative to long term custody, and family reunification does not appear to be a reasonable possibility.

§ 410.302 Sponsor suitability assessment process requirements leading to release of an unaccompanied alien child from ORR custody to a sponsor.

(a) The licensed program providing care for the UAC shall make and record the prompt and continuous efforts on its part towards family reunification and the release of the UAC pursuant to the provisions of this section.

(b) ORR requires a background check, including verification of identity and which may include verification of employment of the individuals offering support, prior to release.

(c) ORR also may require further suitability assessment, which may include interviews of members of the household, investigation of the living conditions in which the UAC would be placed and the standard of care he or she would receive, a home visit, a fingerprint-based background and criminal records check on the prospective sponsor and on adult residents of the prospective sponsor's household, and follow-up visits after release. Any such assessment also takes into consideration the wishes and concerns of the UAC.

(d) If the conditions identified in TVPRA at 8 U.S.C. 1232(c)(3)(B) are met, and require a home study, no release to a sponsor may occur in the absence of such a home study.

(e) The proposed sponsor must sign an affidavit of support and a custodial release agreement of the conditions of

release. The custodial release agreement requires that the sponsor:

(1) Provide for the UAC's physical, mental, and financial well-being;

(2) Ensure the UAC's presence at all future proceedings before DHS and the immigration courts;

(3) Ensure the UAC reports for removal from the United States if so ordered;

(4) Notify ORR, DHS, and the Executive Office for Immigration Review of any change of address within five days following a move;

(5) Notify ORR and DHS at least five days prior to the sponsor's departure from the United States, whether the departure is voluntary or pursuant to a grant of voluntary departure or an order of removal;

(6) Notify ORR and DHS if dependency proceedings involving the UAC are initiated and also notify the dependency court of any immigration proceedings pending against the UAC;

(7) Receive written permission from ORR if the sponsor decides to transfer legal custody of the UAC to someone else. Also, in the event of an emergency (*e.g.*, serious illness or destruction of the home), a sponsor may transfer temporary physical custody of the UAC prior to securing permission from ORR, but the sponsor must notify ORR as soon as possible and no later than 72 hours after the transfer; and

(8) Notify ORR and DHS as soon as possible and no later than 24 hours of learning that the UAC has disappeared, has been threatened, or has been contacted in any way by an individual or individuals believed to represent an immigrant smuggling syndicate or organized crime.

(f) ORR is not required to release a UAC to any person or agency it has reason to believe may harm or neglect the UAC or fail to present him or her before DHS or the immigration courts when requested to do so.

Subpart D—Licensed Programs

§ 410.400 Purpose of this subpart.

This subpart covers the standards that licensed programs must meet in keeping with the principles of treating UACs in custody with dignity, respect

and special concern for their particular vulnerability.

§ 410.401 Applicability of this subpart.

This subpart applies to all licensed programs, regardless of whether they are providing care in shelters, staff secure facilities, residential treatment centers, or foster care and group home settings.

§ 410.402 Minimum standards applicable to licensed programs.

Licensed programs must:

- (a) Be licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children;
- (b) Comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes;
- (c) Provide or arrange for the following services for each UAC in care, including:
 - (1) Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items;
 - (2) Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the UAC was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary;
 - (3) An individualized needs assessment that must include:
 - (i) Various initial intake forms;
 - (ii) Essential data relating to the identification and history of the UAC and family;
 - (iii) Identification of the UAC's special needs including any specific problems that appear to require immediate intervention;
 - (iv) An educational assessment and plan;
 - (v) An assessment of family relationships and interaction with adults, peers and authority figures;

(vi) A statement of religious preference and practice;

(vii) An assessment of the UAC's personal goals, strengths and weaknesses; and

(viii) Identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification;

(4) Educational services appropriate to the UAC's level of development and communication skills in a structured classroom setting, Monday through Friday, which concentrate primarily on the development of basic academic competencies and secondarily on English Language Training (ELT), including:

(i) Instruction and educational and other reading materials in such languages as needed;

(ii) Instruction in basic academic areas that include science, social studies, math, reading, writing, and physical education; and

(iii) The provision to a UAC of appropriate reading materials in languages other than English for use during the UAC's leisure time;

(5) Activities according to a recreation and leisure time plan that include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities, which do not include time spent watching television. Activities must be increased to at least three hours on days when school is not in session;

(6) At least one individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the UAC's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each UAC;

(7) Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the UACs present. This is a time when new UACs are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions

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are made about recreational and other program activities, etc. This is a time for staff and UACs to discuss whatever is on their minds and to resolve problems;

(8) Acculturation and adaptation services that include information regarding the development of social and inter-personal skills that contribute to those abilities necessary to live independently and responsibly;

(9) Upon admission, a comprehensive orientation regarding program intent, services, rules (provided in writing and verbally), expectations and the availability of legal assistance;

(10) Whenever possible, access to religious services of the UAC's choice;

(11) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff must respect the UAC's privacy while reasonably preventing the unauthorized release of the UAC;

(12) A reasonable right to privacy, which must include the right to:

(i) Wear his or her own clothes, when available;

(ii) Retain a private space in the residential facility, group or foster home for the storage of personal belongings;

(iii) Talk privately on the phone, as permitted by the house rules and regulations;

(iv) Visit privately with guests, as permitted by the house rules and regulations; and

(v) Receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband;

(13) Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for release of the UAC; and

(14) Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, the right to apply for asylum or to request voluntary departure in lieu of removal;

(d) Deliver services in a manner that is sensitive to the age, culture, native language and the complex needs of each UAC;

(e) Formulate program rules and discipline standards with consideration for the range of ages and maturity in the program and that are culturally sensitive to the needs of each UAC to ensure the following:

(1) UAC must not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping: And

(2) Any sanctions employed must not:

(i) Adversely affect either a UAC's health, or physical or psychological well-being; or

(ii) Deny UAC regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance;

(f) Develop a comprehensive and realistic individual plan for the care of each UAC in accordance with the UAC's needs as determined by the individualized needs assessment. Individual plans must be implemented and closely coordinated through an operative case management system;

(g) Develop, maintain and safeguard individual client case records. Licensed programs must develop a system of accountability that preserves the confidentiality of client information and protects the records from unauthorized use or disclosure; and

(h) Maintain adequate records and make regular reports as required by ORR that permit ORR to monitor and enforce the regulations in this part and other requirements and standards as ORR may determine are in the interests of the UAC.

§ 410.403 Ensuring that licensed programs are providing services as required by the regulations in this part.

ORR monitors compliance with the terms of the regulations in this part.

Subpart E—Transportation of an Unaccompanied Alien Child

§ 410.500 Conducting transportation for an unaccompanied alien child in ORR's custody.

(a) ORR does not transport UACs with adult detainees.

(b) When ORR plans to release a UAC from its custody under the family reunification provisions at §§410.201 and 410.302, ORR assists without undue delay in making transportation arrangements. ORR may, in its discretion, provide transportation to UAC.

Subpart F—Transfer of an Unaccompanied Alien Child

§410.600 Principles applicable to transfer of an unaccompanied alien child.

(a) ORR transfers a UAC from one placement to another with all of his or her possessions and legal papers.

(b) If the UAC's possessions exceed the amount permitted normally by the carrier in use, the possessions are shipped to the UAC in a timely manner.

(c) ORR does not transfer a UAC who is represented by counsel without advance notice to his or her legal counsel. However, ORR may provide notice to counsel within 24 hours of the transfer in unusual and compelling circumstances such as:

- (1) Where the safety of the UAC or others has been threatened;
- (2) The UAC has been determined to be an escape risk consistent with §410.204; or
- (3) Where counsel has waived such notice.

Subpart G—Age Determinations

§410.700 Conducting age determinations.

Procedures for determining the age of an individual must take into account the totality of the circumstances and evidence, including the non-exclusive use of radiographs, to determine the age of the individual. ORR may require an individual in ORR's custody to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If ORR subsequently determines that such an individual is a UAC, he or she will be treated in accordance with ORR's UAC regulations in this part for all purposes.

§410.701 Treatment of an individual who appears to be an adult.

If, the procedures in §410.700 would result in a reasonable person concluding that an individual is an adult, despite his or her claim to be under the age of 18, ORR must treat such person as an adult for all purposes.

Subpart H—Unaccompanied Alien Children's Objections to ORR Determinations

§410.800 Purpose of this subpart.

This subpart concerns UACs' objections to ORR placement.

§410.801 Procedures.

(a) For UACs not placed in licensed programs, ORR shall—within a reasonable period of time—provide a notice of the reasons for housing the minor in secure or staff secure facility. Such notice shall be in a language the UAC understands.

(b) ORR shall promptly provide each UAC not released with:

- (1) A list of free legal services providers compiled by ORR and that is provided to UAC as part of a Legal Resource Guide for UAC (unless previously given to the UAC); and
- (2) The following explanation of the right of potential review:

"ORR usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

§410.810 Hearings.

(a) A UAC may request that an independent hearing officer employed by HHS determine, through a written decision, whether the UAC would present a risk of danger to the community or risk of flight if released.

(1) Requests under this section may be made by the UAC, his or her legal representative, or his or her parent or legal guardian.

(2) UACs placed in secure or staff secure facilities will receive a notice of the procedures under this section and may use a form provided to them to

make a written request for a hearing under this section.

(b) In hearings conducted under this section, HHS bears the initial burden of production to support its determination that a UAC would pose a danger or flight risk if discharged from HHS' care and custody. The burden of persuasion is then on the UAC to show that he or she will not be a danger to the community or flight risk if released, using a preponderance of the evidence standard.

(c) In hearings under this section, the UAC may be represented by a person of his or her choosing, at no cost to the government. The UAC may present oral and written evidence to the hearing officer and may appear by video or teleconference. ORR may also choose to present evidence either in writing, or by appearing in person, or by video or teleconference.

(d) A hearing officer's decision that a UAC would not be a danger to the community (or risk of flight) if released is binding upon ORR, unless the provisions of paragraph (e) of this section apply.

(e) A hearing officer's decision under this section may be appealed to the Assistant Secretary of the Administration for Children and Families. Any such appeal request shall be in writing, and must be received within 30 days of the hearing officer decision. The Assistant Secretary will reverse a hearing officer decision only if there is a clear error of fact, or if the decision includes an error of law. Appeal to the Assistant Secretary shall not affect a stay of the hearing officer's decision to release the UAC, unless within five business days of such hearing officer decision, the Assistant Secretary issues a decision in writing that release of the UAC would result in a significant danger to the community. Such a stay decision must include a description of behaviors of the UAC while in care and/or documented criminal or juvenile behavior records from the UAC demonstrating that the UAC would present a danger to community if released.

(f) Decisions under this section are final and binding on the Department, and a UAC may only seek another hearing under this section if the UAC can demonstrate a material change in

circumstances. Similarly, ORR may request the hearing officer to make a new determination under this section if at least one month has passed since the original decision, and ORR can show that a material change in circumstances means the UAC should no longer be released.

(g) This section cannot be used to determine whether a UAC has a suitable sponsor, and neither the hearing officer nor the Assistant Secretary may order the UAC released.

(h) This section may not be invoked to determine the UAC's placement while in HHS custody. Nor may this section be invoked to determine level of custody for the UAC.

PART 411—STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND SEXUAL HARASSMENT INVOLVING UNACCOMPANIED CHILDREN

Sec.

411.5 General definitions.

411.6 Definitions related to sexual abuse and sexual harassment.

Subpart A—Coverage

411.10 Coverage of ORR care provider facilities.

Subpart B—Prevention Planning

411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

411.12 Contracting with or having a grant from ORR for the care of UCs.

411.13 UC supervision and monitoring.

411.14 Limits to cross-gender viewing and searches.

411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

411.16 Hiring and promotion decisions.

411.17 Upgrades to facilities and technologies.

Subpart C—Responsive Planning

411.21 Victim advocacy, access to counselors, and forensic medical examinations.

411.22 Policies to ensure investigation of allegations and appropriate agency oversight.